IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
AND
THE HONOURABLE MR.JUSTICE V.GIRI

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

Co.Appeal.No. 13 of 2003()

AGAINST THE JUDGEMENT/ORDER IN CP.17/1993 Dated 13/01/2003
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APPELLANT/APPLICANT

THE RECOVERY OFFICER,
EMPLOYEES PROVIDENT FUND,
KERALA.

BY ADV. SRI.N.N.SUGUNAPALAN

RESPONDENTS: RESPONDENT

M/S.PREMIER MORARJI CHEMICAL COMPANY
LTD. (IN LIQUIDATION), REPRESENTED BY THE
OFFICIAL LIQUIDATOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.K.MONI

THIS COMPANY APPEAL HAVING COME UP FOR ADMISSION ON 02/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B. KOSHY and V.GIRI, JJ.

Co.Appl. No.13 of 2003

Dated this the 2nd day of August, 2007

JUDGMENT

Koshy, J.

Recovery Officer of the Employees Provident Fund Organisation, Kochi, the appellant filed an application for the declaration that the items shown in the annexure attached to the application was not available for transferring to the Official Liquidator and the same had been completely spoiled or damaged or unworthy for any purpose.

2. The properties of M/s Morarji Chemicals Co. Ltd. had been taken over by the Recovery Officer of the Employees Provident Fund Organisation on 22.7.1993 in pursuance to the attachment order for the amounts due towards arrears of employees provident fund dues. Ext.P3 mahazar mentions 4 items. Ext.P3 also will show that all the above attached articles were entrusted to Sri.V.K.Kaqrunakaran, Security Watchman for ensuring safe custody of the same for the time being. Ext.P3 mahazar was prepared by the appellant recovery officer, in the presence of PW2 and both of them had signed in it showing that property in Ext.P3

mahazar was taken over by them for safe custody. Later, the Official Liquidator wanted to take possession of the property, that was resisted by the appellant. Finally, the Appellate Court allowed the official liquidator to take possession of the assets as above. When the Official Liquidator took possession, Ext.P1 inventory was prepared by PW1. That was challenged in MFA and that the appeal filed by the appellant was also dismissed. It is the case of the Official Liquidator that no security officer was there at the time when he inspected the premises and no protection was given by the appellant to the attached properties and the items taken over as per Ext.P3 list were not final. Therefore the company court has arrived at the conclusion that loss can be recovered from the department or the officers who attached to the property as they did not keep the property deligently. It is the contention of the appellant that there were incidents of theft and cases are pending. According to the company court, it was the duty of the appellant to have the safe custody of the articles attached by it in execution of the award for recovery of arrears of contribution. We fully agree with the above view.

Another contention raised by the appellant was that the recovery officer is entitled to Judicial Officers Protection Act 1980. The above Act has no application to the Recovery Officer. Recovery Officer is not a judicial officer. In the above circumstances, we see no grounds to entertain the appeal. With regard to the actual loss and the calculation of loss, all evidence can be adduced by the recovery officer before the Company Court.

Appeal is dismissed with the above observations.

J.B.KOSHY,JUDGE

V.GIRI, JUDGE

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J.B. KOSHY AND

V.GIRI, JJ.

CO.A.13/2003

JUDGMENT

Dated:2ND AUGUST, 2007